

TRAITÉ DE COOPÉRATION EN MATIÈRE DE BREVETS

C4

PCT

RAPPORT PRÉLIMINAIRE INTERNATIONAL SUR LA BREVETABILITÉ

(chapitre I du Traité de coopération en matière de brevets)

(règle 44bis du PCT)

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| Référence du dossier du déposant ou du mandataire 80222GYD22FD | POUR SUITE À DONNER | | Voir le point 4 ci-dessous |
| Demande internationale no. PCT/FR2004/002078 | Date du dépôt international (<i>jour/mois/année</i>) 03 August 2004 (03.08.2004) | Date de priorité (<i>jour/mois/année</i>) 04 August 2003 (04.08.2003) | |
| Classification internationale des brevets (8 ^e édition, sauf indication d'une édition antérieure) Voir les informations pertinentes dans le formulaire PCT/ISA/237 | | | |
| Déposant ABBOTT SPINE | | | |

1. Le présent rapport préliminaire international sur la brevetabilité (chapitre I) est établi par le Bureau international au nom de l'administration chargée de la recherche internationale selon la règle 44bis.1.a).

2. Ce RAPPORT comprend un total de 8 feuilles, y compris la présente feuille de couverture.

Dans les feuilles jointes, toute référence à l'opinion écrite de l'administration chargée de la recherche internationale doit être entendue, à la place, comme une référence au rapport préliminaire international sur la brevetabilité (chapitre I).

3. Le présent rapport contient des indications relatives aux points suivants :

- | | |
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| <input checked="" type="checkbox"/> Cadre n° I | Base de l'opinion |
| <input type="checkbox"/> Cadre n° II | Priorité |
| <input checked="" type="checkbox"/> Cadre n° III | Absence de formulation d'opinion quant à la nouveauté, l'activité inventive et la possibilité d'application industrielle |
| <input type="checkbox"/> Cadre n° IV | Absence d'unité de l'invention |
| <input checked="" type="checkbox"/> Cadre n° V | Déclaration motivée selon l'article 35.2) quant à la nouveauté, l'activité inventive et la possibilité d'application industrielle; citations et explications à l'appui de cette déclaration |
| <input type="checkbox"/> Cadre n° VI | Certains documents cités |
| <input type="checkbox"/> Cadre n° VII | Certaines irrégularités relevées dans la demande internationale |
| <input type="checkbox"/> Cadre n° VIII | Certaines observations relatives à la demande internationale |

4. Le Bureau international communiquera le présent rapport aux offices désignés conformément aux règles 44bis.3.c) et 93bis.1 mais pas avant l'expiration du délai de 30 mois à compter de la date de priorité (règle 44bis.2), sauf si le déposant a présenté une requête expresse à cet égard en vertu de l'article 23.2).

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| Date d'établissement du présent rapport 10 July 2006 (10.07.2006) |
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| | |
|---|--|
| Bureau international de l'OMPI 34, chemin des Colombelettes 1211 Geneva 20, Switzerland no de télécopieur +41 22 338 82 70 | Fonctionnaire autorisé Athina Nickitas-Etienne e-mail: pt04@wipo.int |
|---|--|

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

PCT

Translation

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

| | | |
|---|---|---|
| | | Date of mailing (day/month/year) |
| Applicant's or agent's file reference 80222GYD22FD | | FOR FURTHER ACTION See paragraph 2 below |
| International application No. PCT/FR2004/002078 | International filing date (day/month/year) 03.08.2004 | Priority date (day/month/year) 04.08.2003 |
| International Patent Classification (IPC) or both national classification and IPC | | |
| Applicant ABBOTT SPINE | | |

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| <p>1. This opinion contains indications relating to the following items:</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Box No. I Basis of the opinion <input type="checkbox"/> Box No. II Priority <input checked="" type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability <input type="checkbox"/> Box No. IV Lack of unity of invention <input checked="" type="checkbox"/> Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement <input type="checkbox"/> Box No. VI Certain documents cited <input type="checkbox"/> Box No. VII Certain defects in the international application <input type="checkbox"/> Box No. VIII Certain observations on the international application <p>2. FURTHER ACTION</p> <p>If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.</p> <p>If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.</p> <p>For further options, see Form PCT/ISA/220.</p> <p>3. For further details, see notes to Form PCT/ISA/220.</p> |
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| Name and mailing address of the ISA/EP | Authorized officer |
| Facsimile No. | Telephone No. |

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INTERNATIONAL SEARCHING AUTHORITY

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Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 This opinion has been established on the basis of a translation from the original language into the following language _____, which is the language of a translation furnished for the purposes of international search (under Rule 12.3 and 23.1(b)).
2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material
 a sequence listing
 table(s) related to the sequence listing
 - b. format of material
 in written format
 in computer readable form
 - c. time of filing/furnishing
 contained in the international application as filed.
 filed together with the international application in computer readable form.
 furnished subsequently to this Authority for the purposes of search.
3. In addition, in the case that more than one version or copy of a sequence listing and/or table(s) relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

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Box No. III

Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

- the entire international application
 claims Nos. 19-25

because:

- the said international application, or the said claims Nos. 19-25
relate to the following subject matter which does not require an international preliminary examination (*specify*):

See supplemental sheet

- the description, claims or drawings (*indicate particular elements below*) or said claims Nos. _____
are so unclear that no meaningful opinion could be formed (*specify*):
- the claims, or said claims Nos. _____ are so inadequately supported
by the description that no meaningful opinion could be formed.
- no international search report has been established for said claims Nos. 19-25
- the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:
the written form has not been furnished
 does not comply with the standard
the computer readable form has not been furnished
 does not comply with the standard
- the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.
- See Supplemental Box for further details.

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

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| International application No. | PCT/FR2004/002078 |
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| Box No. V | Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement |
|-----------|---|

1. Statement

| | | | |
|-------------------------------|--------|---------------------|-----|
| Novelty (N) | Claims | <u>6, 10, 12-18</u> | YES |
| | Claims | <u>1-5, 7-9, 11</u> | NO |
| Inventive step (IS) | Claims | | YES |
| | Claims | <u>6, 10, 12-18</u> | NO |
| Industrial applicability (IA) | Claims | <u>1-18</u> | YES |
| | Claims | | NO |

2. Citations and explanations:

1 Reference is made to the following documents in the present notification:

- D1: WO 01/64140 A (BUHLER MARKUS; RAMADAN AYMEN (CH); SCIENT X (FR)) 7 September 2001 (2001-09-07)
- D2: EP 0 699 426 A (MEDINOV SA) 6 March 1996 (1996-03-06)
- D3: FR 2 799 638 A (ZACOUTO FRED) 20 April 2001 (2001-04-20)
- D4: WO 01/01893 A (BEYERSDORFF BORIS; MARNAY THIERRY (FR); SPINE SOLUTIONS INC (US) 11 January 2001 (2001-01-11)
- D5: US 5 899 941 A (TANAKA KOICHI ET AL) 4 May 1999 (1999-05-04)

2 INDEPENDENT CLAIM 1

2.1 The present application fails to comply with the requirements of PCT Article 33(1) since the subject matter of claim 1 does not meet the requirement of novelty defined in PCT Article 33(2).

Document D1 describes (the references between

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Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

parentheses apply to this document) (cf. figure 1 and claim 1):

Intervertebral disc prosthesis (1) that can be placed between two vertebrae by a posterior approach or anterior approach, comprising:

- a first fixing element (2) provided with a first face (2₁) for anchoring in one of the vertebrae, and with a second cooperating face;
- a second fixing element (3) provided with a first face (3₁) for anchoring in the other vertebra, and with a second cooperating face;
- a first prosthetic element (5) provided with a first active face (6) and a second cooperating face, said cooperating faces of the first fixing element and of the first prosthetic element ensuring the connection of the two elements in a plane substantially orthogonal to the axis of the vertebrae; and
- a second prosthetic element (7) provided with a first active face (8) and a second cooperating face, the cooperating faces of the second fixing element and of the second prosthetic element ensuring the connection of the two elements in a plane substantially orthogonal to the axis of the vertebrae;
- said active faces of the prosthetic elements each defining a concave and convex spherical cap portion (6, 8), respectively, which spherical cap portions cooperate with one another.

2.2 In addition, each of documents D2 and D3 describes all the technical features of claim 1.

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| Box No. V | <u>Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</u> |
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3 INDEPENDENT CLAIM 4

- 3.1 The present application fails to comply with the requirements of PCT Article 33(1) since the subject matter of claim 4 does not meet the requirement of novelty defined in PCT Article 33(2).
Document D3 describes (the references between parentheses apply to this document) (cf. figures 1, 14-16, and page 9, lines 21 to page 10, line 9):

Intervertebral disc prosthesis that can be placed between two vertebrae by a posterior approach or anterior approach, comprising:

- two prosthetic elements, each prosthetic element comprising two separate parts, each part having a first face to be fixed on a vertebra and a second active face (25a, 25b) in the shape of a spherical cap;
- the spherical cap portions forming the active faces of the two parts belonging to the same prosthetic element are disposed on the same spherical cap when said parts are fixed to the vertebra.

4 DEPENDENT CLAIMS 2, 3, 5-18

The claims do not contain any features which, in combination with the features of any claim to which they refer back, meet the requirements of the PCT in respect of novelty and inventive step (PCT Article 33(2) and 33(3)).

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Supplemental Box

In case the space in any of the preceding boxes is not sufficient.

Continuation of:

Box III

PCT Rule 39.1(iv) – Method for treatment of the human or animal body by surgery